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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Petition Of The Pennsylvania) CC Docket No. 96-98
Public Utility Commission for)
Expedited Waiver Of The 10-Digit)
Dialing Requirement For 412)
Area Code Relief)

To: Chief, Common Carrier Bureau

REPLY COMMENTS OF
AERIAL COMMUNICATIONS, INC.

Aerial Communications, Inc.¹ and its subsidiary APT Pittsburgh Limited Partnership ("APT Pittsburgh") hereby file Reply Comments in opposition to the Pennsylvania Public Utility Commission's ("PaPUC") Petition for Expedited Waiver of the Ten-Digit Dialing Requirement of 47 C.F.R. §51.29(c)(3)(ii) for 412 NPA Area Code Relief ("PaPUC Petition").² APT Pittsburgh holds a license for broadband Personal Communications Services in the Pittsburgh MTA.

¹ Aerial Communications, Inc. ("Aerial Communications"), a majority-owned subsidiary of Telephone and Data Systems, Inc., holds licenses for six broadband Personal Communications Services MTA markets including Minneapolis-St. Paul, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City and Columbus and is in the process of implementing competitive wireless services in these markets.

² FCC Public Notice, February 25, 1997, DA-97-405

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DISCUSSION

Aerial Communications and APT Pittsburgh support the arguments made by competitive local exchange carriers (“CLECs”) that interim and the long term availability of local number portability do not eliminate the anticompetitive effects of the proposed area code overlay without mandatory ten-digit dialing in the geographic area affected by the area code.

As a new entrant wireless service provider, however, Aerial Communications and APT Pittsburgh are uniquely situated in comparison to CLECs and, as such, are likely to suffer the greatest anticompetitive impact of an overlay without a ten-digit dialing requirement. Specifically, the PaPUC’s reliance on interim and permanent local number portability as a remedy to the anticompetitive effects of an overlay without ten-digit dialing does not take into account the fact that incumbent cellular operators are not required to port their numbers requiring seven-digit dialing to new entrant wireless service providers until, at least, June 30, 1999.³

The unavailability of wireless local number portability for at least two years places new entrant wireless service providers at a serious competitive disadvantage at the most critical period of its competitive entry into the western Pennsylvania wireless market. The growth of a new wireless service provider’s business will depend, in large part, on attracting customers of incumbent cellular operators. The unavailability of wireless local number portability will only discourage customers of incumbent cellular operators with numbers requiring seven-digit dialing from switching to new wireless service providers that are assigned a new area code and ten-digit dialing.

³ See First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability, 11 FCC Rcd. 8352 (1996); and First Memorandum Opinion and Order on Reconsideration in CC Docket No. 95-116, adopted March 6, 1997.

Thus, land line number portability does not provide competitive parity and fails to avoid the anticompetitive effect of area code overlays on new wireless service providers.

The anticompetitive effects of an area code overlay without mandatory ten-digit dialing on new wireless service providers, in particular, serve as a barrier to entry in violation of Sections 332(c)(3) and 253(a) of the Communications Act of 1934 (“Communications Act”), as amended by the Telecommunications Act of 1996 (“1996 Telecom Act”). Under Section 332(c)(3) of the Communications Act, state and local governments are prohibited from imposing entry barriers on commercial mobile services.⁴ Similarly, Section 253(a) of the 1996 Telecom Act prohibits state and local governments from engaging in legal or regulatory practices which have the effect of prohibiting the ability of an entity to provide interstate or intrastate telecommunications services.⁵ The Commission must deny the PaPUC Petition because an overlay without mandatory ten-digit dialing will have an anticompetitive effect particularly on new wireless service providers in violation of federal statutory mandates.

In addition, denial of the PaPUC Petition will serve as guidance to the Pennsylvania Commonwealth Court, which is scheduled to hear oral arguments on April 9, 1997, on the propriety of the PaPUC Order adopting the area code overlay with seven-digit dialing in consolidated appeals entitled County of Allegheny v. Pennsylvania Public Utility Commission, No. 2745 C.D. 1996 and MCI Telecommunications Corporation v. Pennsylvania Public Utility Commission, No. 2879 C.D. 1996.

Under Section 251(e)(1) of the 1996 Telecom Act, Congress granted the Commission “exclusive jurisdiction over those portions of the North American

⁴ 47 U.S.C. § 332(c)(3)(A).

⁵ 47 U.S.C. § 253.

Numbering Plan that pertain to the United States.”⁶ While the Commission has authority to delegate any portion of its jurisdiction to state commissions, state commissions must not be permitted to adopt numbering policies that are in direct violation of federal statutes. The Commission should give the Pennsylvania court guidance as to why the PaPUC Order is non-compliant with congressional mandates.

CONCLUSION

For the reasons stated above, the Commission should deny the PaPUC’s request that the Commission waive its requirement of ten-digit dialing for overlay NPA relief plans.

Respectfully submitted

AERIAL COMMUNICATIONS, INC.

By: 

Brian T. O'Connor
Director, External Affairs and
Latrice Kirkland
Manager, Industry Relations
8410 West Bryn Mawr
Suite 1100
Chicago, IL 60631
(773)399-7464

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⁶ 47 U.S.C. § 251(e)(1).